IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6533 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI KANABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioners

Mr. H.L.Jani, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/11/2000

ORAL JUDGEMENT

Rule. Learned A.P.P. Mr. H.L. Jani waives service of rule on behalf of the respondents nos.1 to 4.

1. The petitioners have prayed to quash and set aside the proceedings initiated by Gandevi Police Station vide CR no.1013/2000 and has prayed for a direction to the respondent to release the truck no. GJ-17-X-2502 belonging to the petitioners. The PI Nashabandi Police Station, Surat filed FIR against the present petitioners nos.1 and 2 for the offences made punishable under Section 70C and 81 of the Bombay Prohibition Act on the allegation that on 6-11-2000 at around 1.30 p.m., the accused were found in possession of 12000 Kgs. jaggery loaded in the said truck. That the said jaggery was not fit for human consumption, and as such, the truck was detained and the petitioners were apprehended.

2. The petitioners have contended that the said goods of jaggery belonged to the petitioner no.3 and he was authorised to trade in all kinds of jaggery. That on 12-1-1999, the petitioner no.3 despatched the said goods from Madhya Pradesh consigned to M/s. Rajnikant Basraj at Danu Road, Maharashtra to be delivered at his place. The said goods were being transported through M/s Swastik Transport Company of Asta by truck bearing above registration number. The said truck was being driven by the petitioner no.1 and the petitioner no.2 was accompanying the petitioner no.1 as a Cleaner. It is further contended by the petitioner that said truck was intercepted near Machhakadi Jagathnaka, Taluka Bilimora, District Surat and the above stated FIR was filed and crime was registered against the petitioner.

3. Learned Advocate Mr. Sanjanwala has submitted that the State Government has prescribed a procedure and a circular is issued to all concerned authorities that when unconsumable jaggery is found being illegally transported, the police authorities shall take the material to the concerned Mamlatdar for inspection and only on his certification, the goods shall be seized. In the instant case, as per FIR, the concerned Police authority have failed to obtain such report from the concerned Mamlatdar and have detained the truck illegally despite the driver and cleaner have produced the documents showing that the goods were consigned to M/s. Rajnikant Basraj at Danu Road, Maharashtra where the provisions of the Bombay Prohibition Act is not applicable, and as such, the complaint deserves to be quashed and the said truck is required to be released.

4. In response to the notice issued vide earlier order, the Investigating Officer is present alongwith the learned A.P.P. and has shown the certificate issued by Mamlatdar, Gandevi dated 6-11-2000 wherein it is stated

that on prima facie examination, it could not be determined whether the said jaggery was consumable goods or not, and as such, analysis in a laboratory is necessary. However, nothing is shown to the Court by the Investigating Officer from the relevant papers so as to infer a fact that the petitioners as accused of the said FIR intended to unload the said goods within the territory of Gujarat in violation of the provisions of the Bombay Prohibition Act. No facts are shown at the time of hearing as to why the police authorities have not considered the documents shown by the driver to them when the truck was seized. The said documents clearly suggest that the goods were despatched from Madhya Pradesh to M/s. Rajnikant Basraj at Danu Road, Mahrashtra. It may be that during the transit of the goods, the truck driver might have entered the city area from the highway, but the said act per se would not constitute any offence.

5. Under the circumstances, the facts apparent from the material produced on record suggest that FIR registered vide CR no.1013/2000 against the petitioners nos. 1 and 2 does not disclose any offence as alleged against the petitioners , and as such, deserves to be quashed and set aside.

6. On the basis of the foregoing discussion, the following orders are passed:

(i) The impugned FIR bearing CR no.1013/2000 registered at Gandevi Prohibition Police Station against the petitioners nos.1 and 2 is hereby quashed and set aside.

(ii) The truck bearing no.G&-17-x-2502 seized by the Gandevi Police, pursuant to the investigation under above stated FIR, with consigned goods, be released to the petitioner on compliance of the following terms and any other appropriate condition(s) which the trial Court may deem just and proper:

(a) The petitioner shall file an undertaking before the trial Court to the effect that the goods consigned through the said truck shall not be stored or used or caused to be used or consumed within the territory of the State of Gujarat and shall be transported to its destination at Danu Road, Maharashtra as early as possible.

(b) The petitioner shall carry the goods in question under police escort at his cost.

Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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